IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

OP.No. 1390 of 1998(M)

PETITIONER:

THE ERNAKULAM REGIONAL CO-OPERATIVE MILK PRODUCERS' UNION LTD;
P.B.NO.2212, KOCHI : 682 024.,
REP: BY ITS MANAGING DIRECTOR.

BY ADV. SRI.B.S.KRISHNAN (SR.)

RESPONDENTS:

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1) ERNAKULAM DAIRY EMPLOYEES UNION (CITU)
REG.NO.228/79, TRIPUNITHURA,
REP: BY ITS GENERAL SECRETARY.

2) THE INDUSTRIAL TRIBUNAL,
ALAPPUZHA.

BY ADV. SRI.T.A.SHAJI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 26/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP.No. 1390 of 1998(M)

ORDER ON CMP.NO.2493 OF 1998 IN OP.NO.1390 OF 1998-M.

DISMISSED.

26/10/2007. **Sd/- T.R.Ramachandran Nair, Judge.**

APPENDIX

Petitioner's Exhibits:-

P1: **Copy of order dtd.28/3/1983 transferring Ernakulam Dairy to KCMMF.**

P2: **Copy of relevant order of KCMMF regularising the service of Sri.Jacob from 23/7/84.**

P3: **Copy of the claim statement dtd.17/3/1995 submitted by the respondent union.**

P4: **Copy of the written statement dtd.23/6/1995 of the petitioner management.**

P5: **Copy of the Award of the 2nd respondent dtd.15/4/1997.**

Respondents' Exhibits:- **Nil.**

(true copy)

P.A. TO JUDGE.

Kvs/-

T.R.RAMACHANDRAN NAIR, J.

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O.P.No.1390 of 1998-M.

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Dated this the 26th day of October, 2007.

J U D G M E N T

The petitioner is challenging Ext.P5 award passed by the 2nd respondent Industrial Tribunal. As per the award the tribunal held that the employee concerned is entitled to draw increments and other benefits on the basis that his regular service started from 1.4.1983.

2. The short facts leading to the Original Petition are the following:

The Ernakulam Dairy originally belonged to the Kerala Live Stock Development and Milk Marketing Board, a Government of Kerala undertaking. This was later transferred to the Kerala Co-operative Milk Marketing Federation Limited with effect from 1/4/1983. Later when the petitioner Union was formed the dairy was taken over by them. The workman concerned was provisionally appointed as Refrigeration Mechanic in Ernakulam Dairy by the K.L.D. & M.M. Board on 9/9/1982. Ext.P1 is the order by which the Ernakulam Dairy was transferred to the Kerala Co-operative Milk Marketing Federation. It is admitted on both sides that the re-organisation of staff and re-deployment of existing staff was governed by the stipulation in Ext.P1 that the provisional staff who were transferred will

continue to be in the same status for the time being. Accordingly the work man Sri.C.K.Jacob continued to be a provisional employee in the transferred orgnisation also.

3. Ext.P2 is the proceedings by which his services was regularised along with certain other persons. He was entitled for increment and other service benefits with effect from the date of regularisation. The period of probation is one year, subject to further extension if found necessary. Thereafter a dispute was raised claiming his regularisation from the date of his initial provisional appointment. This was referred to the Industrial Tribunal and the Tribunal considered it in ID.No.3/1995. Ext.P3 is the claim statement and Ext.P4 is the written statement filed by the management. In Ext.P5 award the learned Tribunal took the view that as the work man was continuing without any brake and even though his continuance in service under the Board was purely on provisional basis the work man ought to have been regularised with effect from the date of transfer. The view taken is that if his continuance was purely on provisional basis and that too for a specified period, he could not have continued indefinitely under the new employer and in view of the non issue of any fresh order in his case by the Federation, it can only be presumed that he was absorbed on permanent basis under the service of the Federation. Therefore it is held by the Tribunal that his service under the Federation should have been treated as on regular basis from the date of

amalgamation.

4. Heard both sides. The learned counsel for the petitioner submits that the view taken by the Tribunal is totally perverse and is against the accepted legal principles. The petitioner was only a provisional employee appointed under Rule 9(a)(i) of KS & SSR and going by the rules and the decisions of this Court such an employee was not at all entitled for regularisation. But still the management by Ext.P2 decided to regularise such employees from 1/6/1984. Therefore, at any rate, he cannot claim any regularisation prior to that date. The learned counsel further submitted that going by the terms of the transfer such provisional employees were continuing as such on the date of transfer in the same status, and hence cannot claim any regularisation as on that date, since it depended upon a decision by the management.

5. The learned counsel for the first respondent union submits that the work man was appointed by the Board under the relevant rules at that time and as he continued uninterruptedly, the view taken by the Tribunal cannot be said to be incorrect. Admittedly the work man was appointed in terms of Rule 9(a)(i) of KS & SSR. The management was prepared to grant regularisation as per Ext.P2. The period during which he was continuing cannot enure to the benefit of the employee and his continuance in service entirely depended upon the will of the management in the light of the specific

stipulations in Ext.P1, that such provisional employees will continue to be in the present status. None of the relevant rules of KS & SSR confer any right on him for regularisation. The arrangement was only temporary, till regular hands joined duty. This Court has consistently held the view that such employees had no right to continue in service. See *Saraswathy v. State of Kerala* (2000(1) KLJ 1015).

6. The tribunal apparently took the view in favour of the work man stating that he was having uninterrupted service and therefore there is some sort of regular engagement, especially in the absence of a fresh order. The said finding is not correct, in the light of the well accepted principles. It is well settled that such appointment will not confer any right for regularisation. Therefore, the view taken by the Tribunal is totally perverse and erroneous. Herein the management is an institution registered under the Co-operative Societies Act. They had the absolute right to decide about the continuance of the provisional employees. By Ext.P2, they decided to regularise them from a particular date. The period of probation was also fixed. In the absence of any decision by the management to grant any retrospective regularisation, the Tribunal was not right in substituting it by its own reasons. Since the petitioner was granted regularisation as per Ext.P2 he will acquire the right flowing from it, as provided therein. Therefore, Ext.P5 award, as far as it declares regularisation from 1-4-1983 is quashed.

7. The learned counsel for the 1st respondent submitted that this shall not prejudice the right of the work man to move the management for appropriate relief seeking regularisation from an earlier date. It is upto him to move the management for any such relief. If a motion is made by the said work man or by the 1st respondent union, the petitioner will consider the same and pass appropriate orders, in accordance with law, and after considering relevant materials, relating to his tenure.

The Original Petition is allowed as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-